

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-1182V

Filed: August 14, 2017

UNPUBLISHED

PHILLIP BERNOTAS,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Attorneys' Fees and Costs

*John Robert Howie, Howie Law, PC, Dallas, TX, for petitioner.*

*Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>**

**Dorsey**, Chief Special Master:

On September 21, 2016, Phillip Bernotas ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act"). Petitioner alleged that he suffered brachial neuritis as a result of receiving a Tetanus, Diphtheria, Acellular Pertussis ("Tdap") vaccine on September 21, 2013. On June 16, 2017, the undersigned issued a decision awarding compensation to petitioner based on the parties' joint stipulation. (ECF No. 25.)

On June 28, 2017, petitioner filed a motion for attorneys' fees and costs. (ECF No. 26.) Petitioner requests attorneys' fees in the amount of \$16,310.50, and

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

attorneys' costs in the amount of \$761.12. (*Id.* at 1) In compliance with General Order #9, petitioner filed a signed statement indicating that petitioner incurred no out-of-pocket expenses. Thus, the total amount requested is \$17,071.62.

On July 17, 2017, respondent filed a response to petitioner's motion. (ECF No. 27.) Respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that he "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Respondent "respectfully recommends that the Chief Special Master exercise her discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3. Petitioner did not file a reply.

The undersigned has reviewed the billing records submitted with petitioner's request. The undersigned has reviewed the billing records submitted with petitioner's request. Petitioner's counsel has requested an increase in rates previously requested for work performed in 2015-16<sup>3</sup> and rates for work performed in 2017. See Pet. Motion at 1 (Table of requested rates). The undersigned recently awarded the rates requested in this case in several SPU cases, *Murray* 16-575V, *English* 16-825V and *Glick* 16-1377.<sup>4</sup> As stated in *Murray*, the requested rates are within the range corresponding to the experience of the attorneys involved.<sup>5</sup> Furthermore, the undersigned finds the requested rates to be appropriate given the attorneys' experience and high quality of work. See *McCulloch v. Sec'y of Health & Human Servs.*, No. 09-293V, 2015 WL 5634323, at \*17 (Fed. Cl. Spec. Mstr. Sept. 1, 2015) (discussing the factors which should be considered when determining an attorney's appropriate hourly rate). In the undersigned's experience, the request appears reasonable, and the undersigned finds no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

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<sup>3</sup> For example, petitioner's counsel has requested an increase in his rate for work performed in 2015-16 from \$300 per hour to \$350 per hour.

<sup>4</sup> After allowing time for the parties to file any motion for redaction, these decisions will be posted to the court's website, [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov).

<sup>5</sup> See <http://www.uscfc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule2015-2016.pdf> (last visited on July 19, 2017) (for the OSM's 2015-16 Fee Schedule); <http://www.uscfc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule-2017.pdf> (last visited on July 19, 2017) (OSM's 2017 Fee Schedule).

**Accordingly, the undersigned awards the total of \$17,071.62<sup>6</sup> as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel John R. Howie, Jr.**

The clerk of the court shall enter judgment in accordance herewith.<sup>7</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>6</sup> This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

<sup>7</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.